IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4319 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJITBHAI ADAMBHAI GARANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4319 of 2002

MR MB PARIKH for Petitioner No. 1

MR HC PATEL ASSTT GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/12/2002

ORAL JUDGEMENT

Heard learned advocate Mr.M.B.Parikh on behalf of the petitioner and learned advocate Mr.H.C.Patel appearing on behalf of the respondents.

2. RULE. Learned AGP Mr.H.C.Patel waives service of Rule on behalf of the respondent - State Authority. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

3. In the present petition, the petitioner has challenged the order passed by the Joint Secretary [Appeals], Revenue Department, Gujarat State. Learned advocate Mr.Parikh on behalf of the petitioner has submitted that vide order dated 9th March, 1994 which is at Annexure-B on page-16, the land in question has been given to the petitioner by the Collector, Amreli for a period of 15 years on lease on certain conditions. Thereafter, possession of the land in question was given to the petitioner on 12th March, 1994 and the Panchnama of the land in question was drawn on 24th November, 1995. Thereafter, show cause notice came to be issued by the Collector, Amreli on 5th December, 1996 to the petitioner. Against that, the petitioner has submitted detailed reply on 12th December, 1996 to the District Collector, Amreli and requested the District Collector, Amreli that before June, 1997, the petitioner will satisfy the conditions incorporated in the allotment order dated 9th March, 1998. Thereafter, the petitioner was personally heard by the District Collector, Amreli on 10th December, 1996, 31st December, 1996, 7th January, 1997 and 21st January, 1997. That Advocate for petitioner was also heard and remained personally present. Thereafter, the District Collector, Amreli has passed the order on 19th April, 1997 to continue the lease in respect of the land 0-20 guntha but the remaining land 2-0 Acre is ordered to be taken back by the Government with condition that in the land 0-20 guntha, the petitioner has to utilize and grow tress on the land 0-20 gunthas. The said order has been challenged by the petitioner before the Joint Secretary under Section 211 of the Bombay Land Revenue Code by way of Revision. However, the revisional authority has also rejected the revision application and confirmed the order passed by the District Collector, Amreli by order dated 20th April, 2001.

4. Learned advocate Mr.Parikh has mainly raised two contention before this Court. The first contention raised by learned advocate Mr.Parikh that in response to the show cause notice issued by the District Collector, Amreli to the petitioner, detailed reply dated 12th December, 1996 was submitted by the petitioner but that reply was not taken into account by the District Collector, Amreli. The second contention which has been

raised is that as per the conditions mentioned in the allotment order, the Condition No.10 prescribes that the land is required to be developed by the petitioner within period of three years but before that, the show cause notice was served on the petitioner. He also submitted that possession of the land in question was handed over to the petitioner on 29th March, 1994 and thereafter, Panchnama of the land in question was drawn on 24th November, 1995 but the show cause notice has been served on dated 5th December, 1996 within period of two years. Therefore, sufficient time has not been given to the petitioner as per Condition No.10 to develop the land in question and therefore the order passed by the Collector as well as revisional authority require to be quashed and set aside and the matter requires to be remanded back to the authority so that the authority concerned shall taken into account the reply as well as condition No.10 so prescribed at the time of grant of the lease.

5. Learned AGP Mr.H.C.Patel appearing on behalf of the respondents has submitted that on four occasions, personal hearing was given to the petitioner and even the Advocate for the petitioner was allowed to appear before the District Collector, Amreli and thereafter, the order has been passed. Therefore, the District Collector, Amreli has rightly passed the order and revisional authority has also rightly rejected the revision application. However, he submitted that once the condition has been violated by the petitioner, then, the authority is entitled to issue show cause notice even before expiry of three years and therefore, there is no illegality committed by any of the authorities and hence, the present petition is required to be dismissed.

6. I have considered submissions of the learned advocates for the parties. Looking to the records especially the reply produced by the petitioner as Annexure-C/C dated 12th December, 1996, it seems that said reply has not been taken into account by the District Collector, Amreli. Moreover, the show cause notice has also served on the petitioner within period before expiry of three years. Ultimately, the object of giving the land to the petitioner is for development. It transpires that in some portion of the land, the petitioner has rightly developed but some part of the land in question, could not be developed the land within stipulated time limit. However, in the reply, it is requested that now the petitioner will develop the land as per the condition. But this aspect has not been taken into account by the District Collector, Amreli and therefore, according to my opinion, before passing the

orders by the District Collector, Amreli, reply which has been given by the petitioner dated 12th December, 1996 to the District Collector ought to have been taken into consideration wherein all the details for the expenses incurred by the petitioner in developing the land in question given by the petitioner. Therefore, considering all the facts and circumstances of the case, according to my opinion, the District Collector, Amreli as well as revisional authority have not taken into consideration the reply dated 12th December, 1996 submitted by the petitioner and even the show cause notice has been issued within period of two years on the petitioner in violation of Condition No.10 inasmuch as the tenure of three years has been prescribed in Condition No.10 to develop the land in question. Therefore, in such situation, if the order passed by the District Collector, Amreli and the revisional authority are quashed and set aside while remanding the matter to the District Collector concerned with directions to decide afresh after giving reasonable opportunity of hearing to the petitioner within some reasonable time, will meet the ends of justice between the parties.

7. In view of above discussion, the impugned orders passed by the District Collector, Amreli dated 29th April, 1997 and the order passed by the revisional authority dated 20th April, 2001 are hereby quashed and set aside with direction to the District Collector, Amreli to reconsider the matter in light of the reply dated 12th December, 1996 submitted by the petitioner and to pass appropriate orders in accordance with law after giving reasonable opportunity of hearing to the petitioner.

8. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

Date : 11-12-2002 [H.K.Rathod, J.]

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